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In the

SUPREME COURT OF THE UNITED STATES

No. 712

OLIN R. STONE; ALDA STONE; VERA C. SMITH; FRANCIS A. MILLER; and the WOOD OIL COMPANY, a corporation,
Petitioners,

VERSUS

DANUBE McFARLIN; MAMIE SUE McFARLIN; DAVE MORGAN; DAVE MORGAN, doing business as Dave Morgan Oil Company; R. L. TAYLOE; ROSALIND NO EAR; and THE BUREAU OF INDIAN AFFAIRS OF THE DEPARTMENT OF INTERIOR OF THE UNITED STATES OF AMERICA,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF OF RESPONDENTS

DANUBE McFARLIN and MAMIE SUE McFARLIN,
W. D. GREENSHIELDS,
Ponca City, Oklahoma;
CHESTER L. ARMSTRONG, JR.,
Ponca City, Oklahoma,
Their Counsel.

DAVE MORGAN; DAVE MORGAN, doing business as Dave Morgan Oil Company; and R. L. TAYLOE,
WM. W. RODGERS,
Blackwell, Oklahoma;
JOHN H. GURLEY,
Blackwell, Oklahoma;
LYNN ADAMS,
First National Bank Building.
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Their Counsel.

February, 1958.

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In the
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OCTOBER TERM, 1957

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OLIN R. STONE; ALDA STONE; VERA C. SMITH; FRANCIS A. MILLER; and the WOOD OIL COMPANY, a corporation,
Petitioners,

VERSUS

DANUBE McFARLIN; MAMIE SUE McFARLIN; DAVE MORGAN; DAVE MORGAN, doing business as Dave Morgan Oil Company; R. L. TAYLOE; ROSALIND NO EAR; and THE BUREAU OF INDIAN AFFAIRS OF THE DEPARTMENT OF INTERIOR OF THE UNITED STATES OF AMERICA,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF OF RESPONDENTS

Adoption of Co-Respondents' Brief and Arguments

Respondents herein are informed that the United States of America in behalf of Rosalind No Ear will file a brief and argument in opposition to the Petition for Writ of Certiorari. The position of the United States of America and that of the Danube McFarlin; Mamie Sue McFarlin; Dave Morgan; Dave Morgan, doing business as Dave Mor-

gan Oil Company, and R. L. Tayloe is identical with that of the United States. Therefore respondents herein do hereby adopt the brief and arguments of the United States of America in behalf of Rosalind No Ear with the same force and effect as if separately made by them and request that the same be considered in support of herein respondents' brief and argument.

DANUBE MCFARLIN and MAMIE SUE MCFARLIN,

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Ponca City, Oklahoma;

CHESTER L. ARMSTRONG, JR.,
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Their Counsel.

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WM. W. RODGERS,
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First National Bank Building,
Oklahoma City, Oklahoma,

Their Counsel.

Statement of the Case in Relation to the Issues Presented by Petition for Writ of Certiorari

The findings of fact made by Judge Stephen S. Chandler, Jr., of the United States District Court for the Western District of Oklahoma, where this action originated, and the statement of the case in the opinion of Circuit Judge Walter A. Huxman of the United States Court of Appeals for the Tenth Circuit, adequately furnish this Court with the necessary facts of the case. There is no question on the facts. It was admitted that it was a clear case of accretion. Both courts, considering this case have found that Oklahoma adheres to the common law that accretions become the property of the owner of the adjoining land and rendered their orders and opinions accordingly holding that the facts presented were controlled by the Oklahoma statute 60 O.S.A. 335.

Petitioners on page 7 of their Petition under their statement of the case attempt to inject a factual issue about a dike. This issue was fully tried to the lower court and decided against them. And even if it were an issue it could not result in their favor since the trial herein the Circuit Court of Appeals for the Tenth Circuit, on July 31, 1957, in the case of *Littlefield* v. *Nelson*, reported 246 F.2d 956, has clearly held adversely to their contentions.

It may be difficult to determine what issue, if any, is presented by the Petition for Writ of Certiorari. It presents no issue concisely for this Court's consideration under Supreme Court Rule 19. However, considering the petition most generously it might be said to come under Section (b) of the Supreme Court Rule 19. If so, then the issue to be

considered here is; *has the lower United States District Court in rendering its judgment for the respondents herein, and the United States Court of Appeals for the Tenth Circuit, in affirming it decided any important state question in a way in conflict with applicable state law?* The intervention of the United States of America on behalf of the restricted Indian and fact Government land patents form the origin of the titles concerned in no way involves a question of federal law. The petitioners make no claim that the courts have decided a federal question in a way in conflict with applicable decisions of this Court. The Petition for Writ of Certiorari has failed to present any grounds for calling for an exercise of this Court's power of supervision. Considering the entire record, findings of fact, on which there is no issue, findings of law, and the opinions of the courts considering this action, showing complete exploration of all the law possibly applicable to the issues, and the many decisions of the courts of Oklahoma and the appellate courts, it is apparent that the legal issues present no controversy. The rule of law of real property as concerned with accreted lands is well settled in Oklahoma.

The time and nature of the issuance of the patent without reservation, whether trust or otherwise to petitioner's Lot 7 before Oklahoma became a state does not eliminate it from the Law of Accretions, whether it be the common law or later the statutory law based upon the common law.

Petitioners have erroneously contended throughout this action that the patent dated October 21, 1885 to Lot 7 under which they claim, in that it recites a fixed tract of land free from the operations of the law of accretions which it

common or statutory. It is not the patent but the original government survey of the land that established its location, boundaries and acres contained. The survey of 1871 supplied the basis for the subsequent issue of the patent by the government. Such land surveyed as Lot 7 may have been, more or less, at the date of the patent due to accretions. The patentee on that date received it subject to whatever decrease or enlargement it may have had due to accretions. There were no reservations in the patent (P. Tr. 15). Judge Huxman in his opinion in the case before this Court correctly disposed of the line of cases relied upon by petitioners in the following language:

> "Neither do the cases of *United States* v. *Elliott*, 131 F.2d 720, *United States* v. *Champlin Refining Company*, 156 F.2d 769, and *Choctaw and Chickasaw Nations* v. *Seay*, 235 F.2d 30, by our Court support appellants' position. None of them involved accreted land. They all involved the ownership of the bed of non-navigable rivers and the question in each was whether the grantor intended to reserve from the deed of conveyance of land bordering on such stream his admitted ownership of the land in the bed of the river."

His interpretation of such decisions is unquestionably correct. Petitioners refer to cases in the Court of Appeals of the 8th and 10th Circuits. It should be noted that the 10th Circuit was formerly the 8th. The case of *Brewer-Elliott Oil & Gas Company, et al.* v. *United States, et al.*, 249 Fed. 609; C.C.A. Appeals, 270 Fed. 100, 260 U.S. 77, relied upon by petitioners does not support them. The gist of the *Brewer-Elliott* case was that the United States when it made its grant to the Osages did so without restriction or reservation. Later when it gave to Oklahoma all navi-

igable streams, it would have given the river bed in question in the case, but when the matter became an issue the United States, not wanting to detract from the grant to the Osages, and as between the State of Oklahoma and the Osages, correctly took the position that the stream was considered non-navigable by it at the time of the grant to the Osages some 30 years before the State of Oklahoma acquired its rights. This case had nothing to do with accretions. In *Aladdin Petroleum Corporation* v. *State*, 200 Okla. 134, 191 P.2d 224, the action was by oil company lessee, Aladdin Petroleum Corporation, against the State of Oklahoma, on the relation of the School Land Commission. Aladdin claimed its interest by reason of an oil and gas lease from an abutting landowner on the south border of the Arkansas River in northern Pawnee County. Across this river to the north is Osage County. Aladdin successfully contended that its lease covered the land described in the patent and also the bed of the river to the center meander line of the Arkansas River. That the stream was non-navigable at this point and the State of Oklahoma could not have any rights in same. This case applied the same rule to riparian owners on the outside and abutting Osage lands as it did to the Osages in the *Brewer-Elliott* case hereinabove cited and discussed. The State of Oklahoma was not allowed to treat the south half of the Arkansas River as part of a navigable stream and claim ownership to it by reason of same. This case, and none of the cases referred to in it, had anything to do with the matter of acquisition of property by accretion.

The Supreme Court of Oklahoma and the United States Court of Appeals, Tenth Circuit, have uniformly held that

the issuance of the patent does not fix ownership in land free from the changes in ownership caused by accretion. The rule is well announced in *Braddock* v. *Wilkins*, 182 Okla. 5, 75 P.2d 1139, an Oklahoma case decided in 1938. The syllabus by the Oklahoma Supreme Court is as follows:

> "When a conveyance of land by lot numbers contains a stated number of acres purporting to be conveyed, which stated acreage corresponds with the acreage within the meander line as it existed at the time of the government survey, such statement of the number of acres in no way limits the extent of the grant. The water course and not the meander line is the boundary, and, although the water course shifts and establishes a new water line away from the meander line as surveyed, such water line remains the boundary, and the conveyance describing the land by lot numbers conveys the land up to such shifting line exactly as it does up to the fixed side lines of the lots, and thereby conveys all accretions that exist at the time of the execution of the conveying instrument."

The Oklahoma Court cited with approval the following decisions:

—*Jefferis* v. *East Omaha Land Co.*, 134 U.S. 178, 10 Sup. Ct. 518, 523, 33 L. Ed. 872;

De Long v. *Olsen*, 63 Neb. 327, 88 N.W. 512;

Towell v. *Etter*, 69 Ark. 34, 59 S.W. 1096, 63 S.W. 53;

Rue v. *Oregon & W. R. Co.*, 109 Wash. 436, 186 Pac. 1074, 1077;

Tappendorff v. *Downing*, 76 Calif. 169, 18 Pac. 247.

Another Oklahoma case having to do with the patent is *Criswell* v. *Wilson*, 198 Okla 47, 175 P.2d 87 (1946). This decision was based upon *Braddock* v. *Wilkins*, *supra*, and upon *Smith* v. *Whitney*, 105 Mont. 523, 74 P.2d 450.

The United States Supreme Court Digest, Vol. 11, page 774, under Key No. 114(3), under subject of public lands Property included (in patent) well announces the rule as follows:

> "U. S. Neb. 1890. Where the official plat of the survey of government lands shows a river as one boundary of a certain lot in accordance with Rev. St. Section 2395 *et seq.*, 43 U. S. C. A. Section 751 *et seq.*, a subsequent patent for the land, describing it by number, and referring to the plat on which it is marked as containing a certain amount, and deeds describing the lot by number, pass all accretion to the lot up to their respective dates.—*Jefferis* v. *East Omaha Land Co.*, 10 S. Ct. 518, 134 U.S. 178, 33 L. Ed. 872, *affirming*, C.C. 1889, *East Omaha Land Co.* v. *Jefferis*, 40 F. 386."

Petitioners' Lot 7 at the time of the survey and all times thereafter was bounded on the north by the Salt Fork Branch of the Arkansas River, when the patent was issued to said lot it was being diminished by erosion, the center line of the stream forming its northerly boundary was gradually moving south by east. Continually during this process of nature accretions were being added to land on the north side of the stream of which Lot 9, under which respondents' claim is a part, and by reason of same it was being enlarged. The lower court and the Appellate Court have correctly ruled with reference to the meaning and effect of the government patent to the lands in dispute.

Petitioners in their brief to this Court cite the case of *United States* v. *Champlin Refining Company*, from the Tenth Circuit, 156 F.2d 769, *affirmed*, 331 U.S. 788, 91 L. Ed. 1818, 67 Sup. Ct. 1346 (1946 case), to support their theory of having fixed rights as to the boundary back to the patent and government survey. This decision does not support them but supports the respondents. Please note the following statement of the law from the opinion:

> "(4) Grants by the United States of its public lands bounded on streams or other waters, navigable or non-navigable, made without reservation or restriction, are to be construed as to their effect according to the law of the state in which the land lies. As regards such conveyances, the United States assumes the position of a private owner, subject to the general law of the state. (*Hardin* v. *Shedd*, 190 U.S. 508, 519, 23 S. Ct. 685, 47 L. Ed. 1156; *Hardin* v. *Jordan*, 140 U.S. 371, 384, 11 S.Ct. 808, 35 L. Ed. 428; *Whitaker* v. *McBride*, 197 U.S. 510, 512, 25 S. Ct. 530, 49 L. Ed. 857.) Where it is disposing of tribal lands of Indians under guardianship, the same rule applies. (*Oklahoma* v. *Texas*, 258 U.S. 574, 595, 42 S. Ct. 406, 66 L. Ed. 771.)
>
> "The question here presented is what title passed by the patents when they were issued in 1906 and 1907, prior to the admission of Oklahoma into the Union. (*Brewer-Elliott Oil & Gas Co.* v. *United States*, 260 U.S. 77, 87, 43 S. Ct. 60, 67 L. Ed. 140.)"

Oklahoma Adheres to the General Law of Accretion as Evidenced by 60 O.S.A. 335.

This was the holding of the lower and appellate courts that have considered this case. The last paragraph of Judge Huxman's opinion so states: "We think the Court correctly concluded that 60 O.S.A. 335, the Oklahoma law of accre-

tion, controlled the disposition of this case, and its judgment is, therefore, affirmed." The Oklahoma statute and its historical notes are as follows:

Title 60, paragraph 335, Riparian accretions:

"Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank. R.L. 1910, Para. 6750."

Historical Note

St. 1890, para. 4288; St. 1893, para. 3858; St. 1903, para. 4184; Comp. Laws 1909, para. 7369· Comp. St. 1921, para. 8556.

Origin: Comp. Laws, Dak. 1887, para. 3207.

The above statute and Title 60-336 have been under consideration in the following Oklahoma Supreme Court decisions:

—*Criswell* v. *Wilson*, 198 Okla. 47, 175 P.2d 87;

Mapes v. *Neustadt*, 197 Okla. 585, 173 P.2d 442;

Willett v. *Miller et al.*, 176 Okla. 279, 55 P.2d 90;

Goins et al. v. *Merryman et al.*, 183 Okla. 157, 80 P.2d 268.

There is no claim in any of the above cases that our statutory law was in violation of the 5th Amendment of the Constitution of the United States of America and there-

fore void as taking property without due process of law. It is pointed out by the Supreme Court of Oklahoma that our laws defining accretions and avulsions are derivatives of the common law. In the case of *Willett* v. *Miller, supra,* on page 92 of 55 P.2d of the Court's opinion we have the following observation by the Court:

> "It appears to be conceded that section 8556, *supra,* is declarative of the common law. So also is section 8561, *supra.*
>
> "The doctrine of accretion and reliction is well established in the common law and has often been held applicable in the several states" (Note: Section 8556, above, is same as 60 O.S.A. 335).

In opinion of the United States Court of Appeals for the Tenth Circuit, on July 31, 1957, a decision from the United States District Court for the Eastern District of Oklahoma was affirmed in *Littlefield* v. *Nelson,* 246 F.2d 956. This was a case of accretion under Oklahoma law, 60 O.S.A. 335. The Court held that the hastening of the accretion by government control projects did not prevent riparian owner from the addition of the land under doctrine of accretion. The Court, in its opinion in discussing the Oklahoma statute, states that there is an identical statute in the California Civil Code, Civil Code 1014, and that it has similarly been interpreted as a codification of the common law. Also this opinion points out that 60 O.S.A. 335 has been held declaratory of the common law, citing *Goins* v. *Merryman,* 183 Okla. 155, 80 P.2d 268.

The Center of the Stream Constitutes the Boundary.

It is an established rule in Oklahoma that where a non-navigable stream is made the boundary it is the center of the stream that constitutes the boundary and apart from changes due to avulsion the boundary continues therein and shifts with the current thereof. *State ex rel. Com'rs of Land Office* v. *Warden et al.*, 200 Okla. 613, 198 P.2d 402 (Okla., 1948). Also *Braddock* v. *Wilkins*, 182 Okla. 5, 75 P.2d 1139 (Okla., 1938). *State of Oklahoma* v. *State of Texas*, 258 U.S. 574, 42 Sup. Ct. 406, 414, 66 L. Ed. 771. *State of Nebraska* v. *State of Iowa*, 143 U.S. 459, 12 Sup. Ct. 396, 400, 36 L. Ed. 186.

Petitioners have contended throughout this action that the north boundary to their Lot 7 could be re-established pursuant to the way it is shown on the original government plat (P. R. 11-13). An examination of this exhibit reveals that the surveyors only measured the meanders of the upland. The measurements obviously are at the contact point of the upland and the river bed as it was found to exist at the time of the survey in 1871. Such survey did not fix a center meander line of the stream, and it may be added that such surveys never do. Petitioners have attached to their brief a copy of accretion determination map (P. R. 81) (copy filed with clerk) as was prepared and jointly introduced in the evidence below. This map does not purport to be a re-establishment of the center meander line as it would have existed at the date of the government survey. This is an accretion map prepared in exact accord with the rule for determining accretions in Oklahoma as announced in the case of *Goins* v. *Merryman*

et al., 183 Okla. 157, 80 P.2d 268 (Okla., 1938). The petitioners' contention for the idea that the boundary line was fixed has been urged throughout. Such contention is unsupported by the law and is without merit. Judge Huxman's opinion in this case disposed of it as follows:

> "But here we have no definitely fixed or established lines which can be ascertained at all times. Had the Patent conveyed Lot 7 to the center of the stream, as established by the survey of 1872, we would have a fixed line which might bring the case within the *Hunzicker* decision. There would still, however, remain the question whether it would be required that the river recede and that the land in dispute reappear on the same side of the stream with the remainder of Lot 7."

The Supreme Court of Oklahoma has not modified the common law of accretion, or the statutory law, 60 O.S.A. 335.

As a basis for this Court taking supervisory powers over this action the petitioners contend in their brief (pages 13-18) that the Supreme Court of Oklahoma in *Hunzicker et al.* v. *Kleeden et al.*, 161 Okla. 102, 17 P.2d 384 (Okla., 1932), and in *Mapes* v. *Neustadt*, 197 Okla. 585, 173 P.2d 442 (Okla., 1946), has modified the common law of accretion and the force, effect and application of Section 335, Title 60, pursuant to Section 2, Title 12, O.S. 1951.

In order that this Court may have the statute which petitioners have neglected to give, Title 12, Section 2, O.S. 1951, it is as follows:

> "The common law, as modified by constitutional and statutory law, judicial decisions and the condition and wants of the people, shall remain in force in aid of the general Statutes of Oklahoma; but the rule of the

> common law, that statutes in derogation thereof, shall be strictly construed, shall not be applicable to any general statute of Oklahoma; but all such statutes shall be liberally construed to promote their object (R.L. 1910, Section 46-42)."

Also the notes to this section of the Oklahoma law taken from the Title 12 O.S.A. 2, appear to negative the very contention for which petitioners make the citation, it is as follows:

> "Legislation qualifying common-law rule respecting rights of riparian proprietor in natural flow of stream, did not impliedly abrogate common-law rule previously adopted therein by this section, relating to ownership of bed of nonnavigable stream. *State of Oklahoma* v. *State of Texas*, 42 S. Ct. 406, 258 U.S. 574, 66 L. Ed. 771, *modification denied* 43 S. Ct. 251, 260 U.S. 711, 67 L. Ed. 476."

The *Hunzicker* v. *Kleeden* and *Mapes* v. *Neustadt* cases have not modified the common or statutory law of accretion of Oklahoma. The opinion of Judge Huxman clearly distinguished these cases. The factual situation is clearly different. Factually, the *Hunzicker* v. *Kleeden* case has to do with accretions on the North Canadian River, a nonnavigable stream as it flows through Oklahoma City, Oklahoma County. Originally the city lots owned by plaintiff were not riparian. Later by action of the stream some became riparian, subsequently the stream receded and the plaintiff claimed the accreted land as his, on the theory of acquisition by accretion. It appears to have been agreed between the parties that the action of the stream amounted to accretion and not avulsion, however, the Court decided

the case on the basis that the plaintiff's city lots being non-riparian in the first instance, did have a definite determinable property boundary which was possible of definite determination after the stream receded. The syllabus by the Court is misleading because same neglected to state the lots were city lots, as distinguished from riparian lots.

Factually, the *Mapes* v. *Neustadt* case has to do with accretions and avulsions of lands along the North Canadian River in Blaine County, Oklahoma. The syllabus by the Court may be somewhat misleading unless one read the entire decision and gives attention to the factual situation between the parties. The case held that the acts of the stream were those of avulsion and no accreted land was allowed to be acquired by the plaintiff Mapes. Defendant Neustadt owned Lots 5 and 6 in the Southeast Quarter of the section and had an early patent from the Federal Government. His lots abutted the south bank of the river. Lots 3 and 4 which were never patented to anyone were in the river. Mapes owned the Northeast Quarter and his title was based on a patent from the Federal Government. At the time of the government survey the land was not touched by the river and it was obviously surveyed as a full quarter section of land. However, at the time patent was issued to Mapes in 1917 it was riparian land. Beginning in 1923 and continuing for many years the river continued its movement to the south restoring Lots 3 and 4 which were never patented and destroyed Lots 5 and 6, and then restored them. Mapes' contention was that the medial line of the non-navigable stream moved with the stream and that he was entitled to have by accretion the lands of Neustadt. The controlling feature of this case and one that distin-

guished it from the other cases is that the land of the plaintiff Mapes was never riparian to begin with. There was no stream forming its boundary. It is well established that before any land can concern itself with accretions that it must first have had as a boundary a stream or other body of water. When plaintiff Mapes' land was surveyed it had a straight survey line as its south boundary. Obviously, that was easily re-established.

There is no conflict in the Oklahoma decisions. The well-accepted principles of the law, both common and statutory have been followed.

Even though Oklahoma is one of the youngest states in the Union it has had before its Supreme Court the law of accretions from just about every conceivable approach. In most instances, but not all, this litigation has developed because of the enhanced value of mineral rights in lands and development of oil and gas fields. This has resulted in the Oklahoma law being more settled than in possibly many other older states where such condition has not existed. In some of the cases the important issue to be decided by the Court was one of fact, whether the situation be one of accretion or avulsion. In others it was as to the navigability of the stream, and whether the United States or Oklahoma had the ownership of the stream bed. The Supreme Court of Oklahoma, the United States District Courts in Oklahoma, United States Court of Appeals, and this Court are well due commending for their correct and careful treatment of each action concerning these problems. The Supreme Court of Oklahoma's decisions have been favorably upheld by the United States Court of Appeals for the Tenth (formerly Eighth) Circuit. In 1938 Oklahoma in the case

of *Goins* v. *Merryman, supra,* adopted the rule for apportionment of the accretions as established in *Johnston* v. *Jones,* 1 Black 209, 222, 66 U.S. 209, 222, 17 L. Ed. 117. The Oklahoma Legislature was careful when it made the proviso to Section 1, Title 75, O.S.A., to limit it to navigable streams. The Oklahoma Court very carefully distinguished in the cases of *Hunzicker* v. *Kleeden, supra* and *Mapes* v. *Neustadt, supra,* such cases from those where the land was riparian in the first instance. Careful investigation of all the Oklahoma decisions on the subject will show that there is no conflict in the Oklahoma law. It has never been obligated to reverse any of its decisions, nor modify its law. The law of real property as affected by accretions is so well settled in Oklahoma that one concerned with any particular riparian land well knows what his rights are and has been able to so rely. To rule in favor of the contentions of the petitioners in this action would result in complete chaos to the Oklahoma settled law of accretions. There is no evidence in the record that petitioners have drilled any oil or gas wells on the accreted land in dispute. The contrary appears, it is the respondents who have done so. The petitioners' land in dispute has at all times been riparian, this fact apprized them of the consequences of erosions and accretion and the settled law of Oklahoma applicable to such a situation. Were the conditions reversed and had the accretions been added to their Lot 7, is it conceivable that these petitioners would not claim the accretions as against Lot 9? The rule is well settled that where land is added to the lot by accretion the owner receives the benefit. And when erosion takes his land away, he suffers the loss. *Oklahoma* v. *Texas,* 268 U.S. 252 (1925); *Nebraska* v. *Iowa,* 143 U.S. 359 (1892); *St. Louis* v. *Rutz,* 138 U.S. 226 (1891);

Jefferis v. *East Omaha Land Co.*, 134 U.S. 178 (1890); *Jones* v. *Johnston*, 18 How. 150 (1855); *New Orleans* v. *United States*, 10 Pet. 662 (1836); *Chase* v. *Cheatham*, 194 Okla. 1, 146 P.2d 585 (1943); *Goins* v. *Merryman*, 183 Okla. 155, 80 P.2d 268 (1938); *State* v. *Warden*, 200 Okla. 613, 198 P.2d 402 (1948).

The United States Court of Appeals in rendering its decision herein correctly followed the law as announced in the Oklahoma case of *State* v. *Warden*, 200 Okla. 613, 198 P.2d 402 (1948).

Squarely in point, except for the fact that the issue arose on a navigable stream, is *Bryant* v. *Chicago Mill & Lumber Co.*, 216 F.2d 727 (C.A. 8, 1954). As the Court bluntly put it in *Anderson-Tully Co.* v. *Tingle*, 166 F.2d 224, 228-229 (C.A. 5, 1948): "Where a river is a boundary, and there is no avulsion, a landowner can never cross the river to claim an accretion on the other side."

CONCLUSION

1. The patent to petitioners' Lot 7 being without reservation or restriction does not offer an escape to them of the operation of the common and statutory law of accretions followed in Oklahoma.

2. The United States Court of Appeals for the Tenth Circuit in affirming the judgment of the United States District Court for the Western District of Oklahoma has not decided any important state question in a way in conflict with the applicable law of Oklahoma.

3. The state statute, 60 O.S.A. 335, is based on the common law and is not in violation of the Constitution of the United States

4. The courts in considering and rendering their judgments in this action have not misconstrued Oklahoma statute, 60 O.S.A. 335.

5. Section 1, Title 75 O.S. 1951, has not changed or modified, 60 O.S.A. 335.

6. The courts herein have not misconstrued or misinterpreted the Oklahoma Supreme Court decisions, *Hunzicker* v. *Kleeden*, *supra*, and *Mapes* v. *Neustadt*, *supra*.

The Petition for a Writ of Certiorari should be denied.

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